Vulcan Golf, LLC v. Google Inc. et al Doc. 169

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B. SANFILIPPO & SONS, INC., BLITZ REALTY GROUP, INC., and VINCENT E. "BO" JACKSON, Individually and on Behalf of All Others Similarly Situated,	)	Civil Action No. 07 CV 3371
Lead Plaintiffs,	)	Honorable Blanche M. Manning
v.	)	Magistrate Judge Geraldine Soat Brown
GOOGLE INC., OVERSEE.NET, SEDO LLC, DOTSTER, INC., AKA REVENUEDIRECT.COM, INTERNET REIT, INC. d/b/a IREIT, INC., and JOHN DOES I-X,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO
DEFENDANTS' CONSOLIDATED MOTION TO DISMISS
THE THIRD AMENDED CLASS ACTION COMPLAINT

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I. INTRODUCTION

Defendants' Motion to Dismiss only challenges the replead RICO counts (Counts I, II and III), Count XI for interference with prospective advantage, Count XII for unjust enrichment and Count XIII for civil conspiracy. [1] Defendants' Motion to Dismiss fails to provide any basis for dismissal of said counts pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure, and should be denied in its entirety.

Defendants' arguments rely on either ignorance of the plain language of the allegations of the Third Amended Complaint in Law and Equity ("TAC"), or improper and untimely "merits" arguments requiring adjudication of disputed issues of material fact. Defendants have failed to identify any factual deficiencies or legal insufficiencies that would provide a legitimate basis for dismissal of Counts I, II, III, XI, XII and XIII, at this stage in the litigation.

Defendants peppered their arguments with the ridiculous implication that the Deceptive Domain Scheme and RICO violations are just "too big" for the federal laws.

The reality is that the Enterprise is large. (TAC ¶¶ 83(J), 213, 214), the Deceptive Domain Scheme is massive. (TAC ¶ 2), and the ill-gotten gains shared by Defendants are breathtaking. (TAC ¶ 1). The Deceptive Domain Scheme is admittedly massive, but even more importantly it is systemic, uniform and automated. (TAC ¶¶ 4, 5).

All Defendants and other participants in the Deceptive Domain Scheme "monetize" Deceptive Domains in exactly the same manner and with exactly the same automated technology—Defendant Google's technology. (TAC ¶¶ 1-5, 7, 106-107, 113-115). Deceptive Domains can only generate revenue from the display of AdWords advertisements when Defendant Google causes said advertisements to be displayed and monetized through their automated systems. (TAC ¶¶ 7, 93-98). With respect to monetization with Google AdWords advertisements, the unavoidable truth is that there is nothing "competitive," independent, unique or individual about the Defendants conduct or participation, including but not limited to their actuation of the Deceptive Domain Scheme. Further, Participants in the Deceptive Domain Scheme only receive revenue from monetization of Deceptive Domains with AdWords

[1] Defendants Motion also seeks to dismiss again Count V as to Plaintiff Bo Jackson and Count VII as to Plaintiff Blitz Realty consistent with this Court's March 20, 2008 Order. The TAC does not provide any new allegations with respect to those counts and the re-pleading of those claims was inadvertent.

advertisements when Defendant Google uses its automated systems to collect, transmit, divide and otherwise transact in the ill-gotten revenue. (TAC ¶¶ 124-125).

The sophistication of Google's automated systems reduces what appears to be an "unweildly" large scheme, from a non-technology vantage point, to conduct that is rather simple, organized, detailed, and easily identifiable. In fact, as set forth in detail in the TAC, Google maintains organized records and "reports" that detail, among other things, every participant in the Enterprise, every Deceptive Domain that has been monetized with AdWords advertising, the precise dollar amount generated from AdWords advertisements displayed on each particular Deceptive Domain, and exactly how the ill-gotten revenue was divided. (TAC ¶¶ 116, 122, 125, 216, 252).

In just a matter of seconds on the internet, with a couple of clicks of the mouse, the most unsophisticated internet user can find unequivocal evidence of Defendants' blatant continuation of the Deceptive Domain Scheme, despite this litigation, by typing in common misspellings of famous people, trademarks, or well-known products and services. Throughout the Google Network, "www", "com.com" and other such blatant infringements are being monetized continuously through common, automated systems that process "clicks," display AdWords advertisements, and transact in the associated revenue. (TAC ¶¶ 165-177).

Simply put, it is a modern day racketeering scheme. Neither the massive scope of the violations, nor the fact that each Defendant also maintains "legitimate" business operations apart from their participation in the Deceptive Domain Scheme, provides any basis for immunizing their collective and systemic misconduct from RICO liability. Defendants have each knowingly and voluntarily chosen to participate in the Deceptive Domain Scheme, and to share in the ill-gotten revenue therefrom. They should not now be permitted to escape legal responsibility for said misconduct.

II. FACTUAL OVERVIEW

Class Plaintiffs TAC contains thirteen counts and provides the requisite factual allegations to sustain each. This Honorable Court previously acknowledged the specifics of the Deceptive Domain Scheme are complicated, but summarized them as follows: "In essence, the plaintiffs allege that Google and the other defendants have engaged in a wide-ranging scheme whereby they receive 'billions of dollars in ill-gotten advertising and marketing revenue' by knowingly and intentionally registering, licensing and monetizing purportedly deceptive domain names at the expense of the plaintiff-mark owners". *Vulcan Golf LLC v. Google Inc.*, 2008 WL 818346, at *2 (N.D. Ill. Mar. 20 2008) (Manning, J.). In particular, the TAC alleges the defendants contrived, implemented and continue to engage in the Deceptive Domain Scheme, intentionally and knowingly (TAC ¶¶ 3, 8-9, 152), in order to obtain control over and unauthorized use of Class Plaintiffs' and the putative class members' property (distinctive and valuable marks, domains, deceptive domains, internet traffic, goodwill, prospective business and customers (TAC ¶¶ 200, 203, 244, 296, 430)). By exercising such control, Defendants financially profit, reinvest and transact in the money gained from the misappropriation, taking, use, and monetization of Class Plaintiffs and the putative class members' property (TAC ¶¶ 1, 9, 153, 213, 286, 288, 296).

In order to effectuate the Deceptive Domain Scheme, Defendants utilize Defendant Google's expansive Google Network, that reaches more than 85 percent of internet users worldwide and their actions are carried out 24 hours a day, seven days a week on a second by second ongoing basis (TAC ¶¶ 4, 260-26). This Deceptive Domain scheme utilizes sophisticated, highly organized, systemic programs thru the use of the Mails and Wire. (TAC ¶¶ 256, 257, 259, 260, 358, 359). The systemic and automated programs are not only used to identify, register, taste, kite, and monetized Deceptive Domains, but automated programming is used to systemically collect, share, and otherwise transmit the ill-gotten financial gain. (TAC ¶ 210(e)).

Class Plaintiffs and the putative class members are the direct victims of the Deceptive Domain Scheme as their property/interests are being unlawfully used and misappropriated in furtherance of the fraudulent scheme. (TAC ¶¶ 11, 12). Defendants have continued to taste, kite, register, monetize and/or otherwise use Deceptive Domains, on a regular and continuous basis, since the inception of this litigation. (TAC ¶ 210). Absent Court Order, it is highly unlikely that their conduct will stop. (TAC ¶ 210, 300).

III. LEGAL STANDARDS

Defendants seek dismissal pursuant to Fed.R.Civ.P 9(b) and 12(b)(6). Under Fed.R.Civ.P 12(b)(6) the Court may dismiss a complaint if it fails to state a claim on which relief can be granted. A motion under rule 12(b)(6) tests the legal sufficiency of the complaint, not the merits of the lawsuit. *Gibson v. City of Chicago,* 910 F.2d 1510, 1520 (7th Cir. 1990). In that regard, the court accepts the allegations of the complaint as true, viewing all facts and reasonable inferences drawn therefrom, in the light most favorable to the plaintiff. See *Marshall-Mosby v. Corporate Receivables, Inc.,* 205 F.3d 323, 326 (7th Cir. 2000). In reviewing a motion to dismiss the Court's inquiry is "limited to the factual allegations contained within the four corners of the complaint." *Sotelo v. DirectRevenue, LLC,* 384 F.Supp.2d 1219, 1236 (N.D. Ill.2005).

Under *Bell Atlantic Corp. v. Twombly,* 127 S.Ct. 1955 (2007), a complaint attacked by Rule 12(b)(6) does not need detailed factual allegations but a plaintiffs obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. *Id.* at 1964-65. *Bell Atlantic* does not require a "proving the merits" at the pre-discovery/pleading stage. Rather, it requires only that the factual allegations in the complaint provide the defendants with fair notice of the claim and the grounds upon which the claims rests. *Id.* at 1965. In addition, the allegations must plausibly suggest the plaintiff has a right to relief raising the possibility of relief above a speculative level. *Id.* at 1965, 1973 n.14; see *Gros. v. Midland Credit Management,* 525 F.Supp.2d 1019, 1023 (N.D.Ill. 2007). Accordingly, a court should only grant a motion to dismiss if it is clear that no set of facts as alleged would entitle the plaintiff to relief. *McMath v. City of Gary., 976 F.2d 1026, 1031 (7th Cir. 1992); Gilliman v. Burlington N. R.R. Co.,* 878 F.2d 1020, 1022 (7th Cir. 1989).

Under Rule 9(b) "all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed.R.Civ.P 9(b). However, the particularity requirement of Rule 9(b) may be relaxed when it is shown the details are within the defendants' exclusive knowledge. *Jepson, Inc v. Makita Corp.,* 34 F.3d 1321, 1328 (7th Cir. 1994).

IV. LEGAL ARGUMENT

Defendants' consolidated motion to dismiss should be denied because the allegations of the TAC state a cause of action under 18 U.S.C. § 1962(a), (c) and (d). As set forth in more detail below, the TAC properly alleges an Enterprise through detailed, sufficient, and particular allegations setting forth the Enterprises structure. (TAC ¶¶ 221-228, 246-253). The TAC sets forth defendants' common purpose, direction and activity in the operation of the Enterprise. (TAC ¶¶ 213, 229-244)

Plaintiffs pled a "pattern of racketeering activity," and the predicate acts necessary to support a RICO claim in more than sufficient detail. (TAC ¶¶ 278-282) Class Plaintiffs alleged a direct injury proximately caused by the defendants RICO violations (TAC ¶¶ 296-298, 339, 340,348, 349) and have properly alleged a conspiracy under 18 U.S.C. § 1962(d), (TAC ¶¶ 351-361).

Similarly, Defendants arguments that the TAC fails to state a cause of action for unjust enrichment, civil conspiracy and interference with prospective advantage are unavailing. Defendants' essentially argue that the TAC does not contain sufficient factual allegations to support said claims. To the contrary, the detailed factual allegations contained throughout the TAC, including the generally applicable allegations (TAC ¶¶ 1-11, 65, 83-212), as well as specifically for Unjust Enrichment (TAC ¶¶ 467-472), Civil Conspiracy (TAC ¶¶ 473-478) and Interference with Prospective Business Advantage (TAC ¶¶ 458-466) provide sufficient facts to support each of these claims. As all requisite elements of each claim have been alleged, there is no legal basis for dismissal of said claims. Therefore, Defendants' Motion to Dismiss must be denied.

A. Civil RICO Claims

The U.S. Supreme Court has said of RICO, "[t]he aim is to divest the association of the fruits of its ill-gotten gains." *U.S. v. Turkette*, 452 U.S. 576, 585 (1981). Similarly, the Seventh Circuit has also acknowledged RICO's dual purpose in both preventing "infiltration of legitimate businesses" and also "the broader purpose of separating racketeers from their profits." *Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago*, 747 F.2d 384, 392 (7^{th} Cir. 1984). Racketeering is no less actionable when carried out by legitimate business. *Id. at 394* (citing *Schacht v. Brown,* 711 F.2d 1343, 1356-58 (7^{th} Cir. 1983). In *Cemco Inc. v. Siedman & Seidman,* 686 F.2d 449, 457 (7^{th} Cir. 1982), *cert. denied,* 459 U.S. 880 (1982), the Seventh Circuit explicitly acknowledged the validity of Civil RICO claims against legitimate businesses, stating: "This court has interpreted the RICO statute … to forbid penetration of business by 'any pattern of racketeering activity' embraced by that section [1962], whether or not 'organized crime'" is involved. (citing *U.S. v Aleman,* 609 F.2d 298, 303-304 (7^{th} Cir. 1979)) .

Further, Congress made the express admonition that RICO is to "be liberally construed to effectuate its remedial puruposes [sic]," Pub.L. 91-452, §904(a), 84 Stat. 947. The U.S. Supreme Court has also expressed RICO should be read broadly. See *Turkette 452 U.S.* at 586-587.

1. Plaintiffs have alleged sufficient facts giving rise to a legally cognizable claim under 18 U.S.C §1962(c)

In order to state a viable cause of action under 18 U.S.C §1962(c), a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Goren v. New Vision Intern, Inc.* 156 F.3d 721, 727 (7th Cir. 1998) (citing *Vicom, Inc. v. Harbridge Merchant Services, Inc.,* 20 F.3d 771, 778 (7th Cir. 1994) (quoting *Sedima, S.P.R.L. v. Irmex Co.,* 473 U.S. 479, 496 (1985)).

a. RICO Enterprise

On March 20, 2008, this Honorable Court dismissed the RICO claims contained in Lead Class Plaintiffs" First Amended Complaint in Law and Equity ("FAC") on the basis that the FAC lacked sufficient factual allegations to establish the necessary RICO Enterprise, and that Class Plaintiffs had failed to adequately allege a "person" under section 1962(c) separate and distinct from the RICO Enterprise. *Vulcan Golf LLC v. Google Inc.*, 2008 WL 818346, at *25-28 (N.D. Ill. Mar. 20 2008) (Manning, J.). Lead Class Plaintiffs carefully considered the FAC's insufficiencies and ambiguities, with respect to the RICO Enterprise, and included substantially more detailed factual allegations in the TAC, more than adequately alleging and establishing the existence of the RICO Enterprise. (TAC ¶¶ 213-253). Said paragraphs clarify any ambiguities in the FAC pleadings, as well as provide additional detailed allegations that delineate the necessary control, structure, and identities of the RICO Enterprise. In fact, the TAC far exceeds the required specificity under the pleading standard, Fed.R.Civ.P., Rule 8, applicable to RICO Enterprise allegations. *Kauffmann v. Yoskowitz,* 1990 WL 300795, *2 (S.D.N.Y. 1990). Rule 8 requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" (Fed.R.Civ.P Rule 8(a)(2)) and does not require "a plaintiff to plead the legal theory, facts, or elements underlying his claim." *Phillips v. Girdich*, 408 F.3d 124, 130 (2nd Cir. 2005) (citations omitted).

In the instant motion, Defendants have erroneously suggested the TAC only made "aesthetic" changes to the definition of the enterprise. Yet, despite Defendants hyperbole and rhetoric, they vaguely advance an argument the TAC fails to allege a "person" separate and distinct from the "enterprise". Clearly, if the changes made in the TAC were only "aesthetic" defendants would have vigorously advanced this argument again in the present motion. Their failure to do so, while at the same time acknowledging the changes in the "membership" of the Enterprise, is a clear indication of the substantive changes made in the TAC despite their statements to the contrary. Simply, the heightened factual specificity and clarity of the forty paragraphs (TAC ¶¶ 213 - 253) specifically addressing the RICO Enterprise, including several charts and graphics, belie any argument by Defendants that Class Plaintiffs did not seriously consider the deficiencies identified by this Court in its March 20, 2008 Order, and conscientiously provide the necessary detailed factual support to properly allege the RICO Enterprise.

Defendants are then left to complain that the RICO Enterprise is too large, amorphous, nebulous and open-ended. However, said argument fails because the TAC sets forth the specific categorical identity of each member of the RICO Enterprise, alleging that it consists of the Google Network as defined in paragraph 83(J) which includes: (a) Defendant Google; (b) the Parking Company defendants; (c) Google Search Network with particular entities identified; (d) Google Content Site partners with particular entities identified; and (e) Google AdSense Network. Further, Class Plaintiffs' allege that Defendant Google knows the identity of each and every member of the Enterprise (TAC ¶ 252(a)), maintains control over membership in the Enterprise (TAC ¶ 229), approves membership in the Enterprise (TAC ¶ 230) and maintains records identifying each member of the Enterprise (TAC ¶ 252). If Defendant Google is capable of defining the Enterprise on its website (TAC ¶¶ 217,218), using the Enterprise for its own promotion and financial gain (TAC ¶¶ 218, 219), setting forth rules governing the operation and terms of participation in the Enterprise (TAC ¶ 230), and maintaining records identifying each member of the Enterprise (TAC ¶ 252), it is simply incredulous that it can make the argument to this Court that for purposes of establishing liability for its illegal operation and conduct of the affairs of the Enterprise, said Enterprise is just too large, amorphous, nebulous and open-ended.

b. Structure of the Enterprise

The TAC sets forth sufficient factual allegations establishing the requisite structure of the RICO Enterprise. The Supreme Court has expressed that a RICO enterprise may consist of an informal group of persons, "associated together for a common purpose of engaging in a course of conduct." *Turkette*, 452 U.S. at 583. A group of corporations may comprise an association-in-fact enterprise. *United States v. Huber,* 603 F.2d 387, 393-394 (2nd Cir. 1979).

In ¶ 83(J) of the TAC, the Google Network is defined as:

"The large group of websites and other products, such as email programs and blogs, who have partnered with Google to Display AdWords ads. It is the association of individual/entities that collectively provide the internet advertising network whereby AdWords advertisements are displayed and monetized. The Google Network consists of: (1) Defendant Google, (2) the Parking Company Defendants; (3) Google Search Network (America Online, CompuServe, Netscape, AT&T Worldnet, EarthLink, Sympatico, and others); (4) Google Content Site partners (New York Post Online Edition, Mac Publishing (includes Macworld.com, JavaWorld, LinuxWorld), HowStuffWorks, and others), (5) Goodle AdSense Network (Parking Company Defendants, Domain Aggregators, Domain Registrants, and other third party website owners, blog sites, domain registrants, licensees and aggregators that enter into agreements with Defendant Google for monetization, of domains under their license/control/ownership." (TAC ¶ 83)

The TAC sets forth with sufficient factual specificity how Google, the Parking Company Defendants, and others comprise an "association-in-fact" Enterprise (TAC ¶¶ 213-215) that functions as a cohesive group (TAC ¶¶ 218, 219, 222), both for the common purpose of creating and sustaining an internet advertising network (TAC ¶ 213, 224), as well as carrying out the Deceptive Domain Scheme to divert internet users from their intended websites in favor of the deceptive imposter sites (TAC ¶¶ 239-244)

The requisite hierarchial structure of the RICO Enterprise is set forth in detail in ¶¶ 246-253 of the TAC. Google's control over the Enterprise is delineated with specificity. (TAC¶229-238, ¶¶ 246-253) The TAC alleges that Google controls the Enterprise by, among other things, providing the essential access to the revenue generating AdWords Advertisers (TAC ¶ 226), organizing and promulgating rules for the operation of the Enterprise (TAC ¶ 230), and controlling and monitoring participation in the Enterprise (TAC ¶ 226). A sampling of Google's written control and governance over the membership and participation in the affairs of and operation of the Enterprise is set forth in a detailed chart referencing specific locations on the internet where such documents can be found. (TAC ¶ 230). Although Google maintains primary control, the Enterprise is structured in a such a way that Parking Company Defendants can license with third parties so that third party domain/sites can participate in the Google Network derivatively (through parking company participation). (TAC ¶ 234). Generally, the TAC describes a decision making structure largely dependent upon Google directing the Enterprise through its unique position as the largest search engine in the world and largest internet advertising company in the world (TAC ¶¶229-238, 246-253) In that regard, Defendants' criticisms of the Enterprise and reliance on *Jennings v. Emry,* 910 F.2d 1434, 1440 (7th Cir. 1990) are inappropriate.

In *Jennings*, the Court sought in vain to make sense of an unwieldy complaint alleging a RICO conspiracy by various government agencies to persecute chiropractors. *Id*. The Court rejected plaintiffs' Enterprise allegations because it found "lots of entities, legal or otherwise, floating about in their complaint" but held plaintiffs had failed to "adequately identify the enterprise upon which our attention should be directed". *Id.* In contrast, the TAC clearly identifies the association-in-fact Enterprise, the participants, the roles of the participants and the hierarchical structure of the enterprise (TAC ¶¶ 226-238).

Defendants also improperly characterize the TAC as inadequate under *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 675 (7th Cir. 2000)*,* which stands for the proposition that an Enterprise must be "an organization with a structure and goals separate from the predicate acts themselves." *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 675 (7th Cir. 2000) (quoting *United States v. Masters,* 924 F.2d 1362, 1367 (7th Cir. 1991)). While this statement correctly states the law, it ignores the explicit allegations of the TAC that confirm not every action of the RICO enterprise is illegal (i.e, the predicate acts), such as ¶ 231 which states: "Not every operation and action of the RICO enterprise is illegal, for example, AdWords advertisements are frequently placed/displayed/associated with legitimate domains/sites/video/search results and in compliance with all applicable local, state and federal laws." The TAC clearly sets forth that the Enterprise has a structure separate and distinct from the Deceptive Domain Scheme and the predicate acts associated therewith. (TAC ¶¶ 225, 241, 245). Defendants simply ignore the well-pleaded allegations of the TAC.

The TAC has more than sufficiently satisfied the requisite that "there must be some structure, to distinguish an enterprise from a mere conspiracy….there need not be much." *Burdett v. Miller,* 957 F.2d 1375, 1379 (7th Cir. 1992). The *Burdett* court concluded the requisite structure was supplied "by the *continuity* of the informal enterprise… and by the *differentiation* of roles within it." *Id.* As plainly set forth in the TAC, Class Plaintiffs allege that the Enterprise has been ongoing since at least January 2002 (TAC ¶ 220) and continues to this day with each participant playing a distinct role. (TAC ¶¶ 220, 221-225).

Finally, Defendants take issue with Plaintiffs definition of the "Google Network" suggesting such a definition leads to "meaningless conclusion[s]" and "reflexive observations". (Memorandum in Support of Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pg. 8). While Defendants may quibble with the definition, such a definition is the product of trying to describe a massive scheme in the most succinct, simplistic terms and not a failure to differentiate the Enterprise from its wrongful acts. Plaintiffs have clearly alleged not every action of the RICO enterprise is illegal (TAC ¶ 231). While perhaps ineloquent, Plaintiffs were attempting to convey the Defendants, as participants in the RICO enterprise, utilize the Deceptive Domain Scheme for financial gain which could not occur but for the existence of the legitimate aspects of the Google Network and Defendant Google's absolute control over access to revenue generating AdWords advertisements.

c. Common purpose of the Enterprise.

Class Plaintiffs have clearly alleged that the members of the Enterprise share a common purpose of "providing internet advertising, marketing, and promotional services to Defendant Google AdWords Advertisers" (TAC ¶ 213) and are joined in the common purpose of obtaining maximum economic and commercial gain by providing internet advertising and marketing services to AdWords Advertisers. (TAC ¶ 222, 224). Again, the plain language of the TAC demonstrate that Defendants have simply ignored well plead allegations, and make the improper evidentiary argument that each Defendant acts for its own purpose. Whether any Defendant actually acts for its own purpose is, at best, an issue of material fact that is not properly adjudicated at this stage in the litigation. *McMillan v. Collection Professionals Inc.*, 455 F.3d 754, 761 (7th Cir. 2006).

Even if certain members of the Enterprise were construed by the Court to be economic competitors in some instances, such competition does not thwart the common purpose with respect to the operation of the Enterprise where every member profits from their participation in the common, systemic and automated Deceptive Domain Scheme. (TAC ¶¶ 3, 4, 152). For example, even if Oversee, Sedo, Doster, and IREIT "compete" in that they try to maximize the volume of domain names that they individually taste/kite/register/license/park, they do not compete in the "monetization and use" of those aggregated domain names through the Google Network. Defendant Google completely controls the "use and monetization" of the domains with AdWords advertisements, because Google has complete control over all aspects of the placement of Adwords advertisements throughout the Google Network. (TAC ¶¶ 226, 229, 232).

Further, the TAC alleges Google limits the participation of domain owners in the Google Network and requires most domain owners to license their domains to authorized parking companies, such as the Parking Company Defendants (TAC ¶¶ 230, 234, 235). Google's limitations on direct participation actually decreases competition among Parking Company Defendants by creating a whole market of domains that can only be monetized in the Google Network by licensing first with an authorized parking company (TAC ¶¶ 7(b) and 7(f))). Therefore, there is no competition among Defendants with regard to participation in the Deceptive Domain Scheme.

Defendants erroneously rely on dicta from *Baker v. IBP, Inc.,* 357 F.3d 685 (7th Cir. 2004), in arguing that some purported "competition" undermines a finding that the Enterprise has a common purpose. In *Baker,* the Court stated that "it is not altogether clear" how the alleged enterprise had a common purpose because as the Court analyzed the situation, each member had divergent goals. *Baker*, 357 F.3d at 691. In the instant case the allegations of the TAC clearly demonstrate that the Defendants have a common purpose and goal, and does not suggest any facts giving rise to divergent goals. Nevertheless, once again, the issues of "competition" and/or "divergent goals" among the Defendants, if relevant at all, are an issue of material fact that is not properly disposed of at this stage in the litigation. *McMillan v. Collection Professionsal Inc.,* 455 F.3d 754, 761 (7th. Cir. 2006).

d. Defendants mischaracterize their relationships as ordinary business relationships.

Defendants further challenge the Enterprise by mischaracterizing its hierarchical structure as nothing more than typical business relationships, and thus insufficient to establish a RICO enterprise. In so doing, Defendants continue to ask the Court to ignore the well plead factual allegations (i.e, TAC ¶ 246-253) and strain credulity by arguing that if such allegations were sufficient to constitute "sufficient structure," every commercial entity in the world that contracts to do business would comprise a RICO enterprise. Such drastic implications are not accurate nor are they supported by the facts of this case or the applicable law.

Defendants again ignore, the "self-described role" of Defendant Google in the internet advertising world, as the largest internet advertiser (TAC ¶ 217) capable of reaching 86% of the internet users **world wide**. (TAC ¶ 218). Google cannot be permitted to escape RICO liability for its well-contrived racketeering scheme, simply because it managed to use modern technology and automated processes, to effectuate a massive scheme through a large Enterprise. Nowhere in the RICO jurisprudence is there a requirement that an Enterprise must be simplistic or narrow. See *In re Managed Care Litigation,* 185 F.Supp.2d 1310, 1323 (S.D. Fla. 2002).

In *In re Managed Care Litigation,* plaintiffs alleged that each defendant insurance company was a member of an Enterprise consisting of the Defendant, the Defendant's health plans, and the primary physicians, medical specialists, medical laboratories, hospitals, outpatient centers, pharmacies, home health agencies who contract with the Defendant. *Id.* at 1322-1323. The complaint further referred to this national health care network as a "National Enterprise" *Id.* at 1323. Although the court acknowledged the 11th Circuit did not mandate the heightened "structure" requirement to establish a RICO enterprise as did the 7th Circuit in *Jennings v. Emry,* 910 F.2d 1434, 1440 (7th Cir.1990) and *Stachon v. United Consumers Club, Inc.,* 229 F.3d 673, 676 (7th Cir.2000), it nonetheless concluded that even if it applied this heightened structure standard, the "Nationwide Enterprise" would survive because the Plaintiffs did not simply allege a series of random contractual exchanges. *Id.* at 1323-1324. Plaintiffs alleged a *network* of physicians, hospitals, pharmacies and health care professionals through which the defendants delivered health care to the subscribers. *Id.* at 1323-1324. The Court further concluded such a network was not mere conjecture on the part of the plaintiff as each defendant embraced its respective network, acknowledged their creation of it and used the network as a public relations vehicle. *Id*. at 1324. The same factors are present in the TAC.

Plaintiffs have not alleged a series of random contractual exchanges. Instead, an organized, identifiable and cohesive network (the "Google Network") has been alleged. (TAC ¶ 83(J), 213-253) The Google Network is not speculative, or mere conjecture, rather it is clearly identified and defined on Google's own website. (TAC ¶¶ 217-220). As in *In re Managed Care*, Google uses the "Google Network" as a public relations vehicle and to expand its "reach" (TAC

¶ 219). *In re Managed Care Litigation* establishes that a nationwide Enterprise can be sustained even under the heightened standard of structure required by *Stachon.*

In Stachon, plaintiffs did not "offer the slightest sign of a 'command structure' separate and distinct from UCC"- which was not the purported enterprise. *Stachon,* 229 F.3d at 676. The court reasoned the mere fact that United Consumers Club, Inc., had business dealings with many unnamed manufacturers, wholesalers, and members failed to establish they functioned with United Consumers Club, Inc. as a continuing unit or as an ongoing structured organization United Consumers Club, Inc.. *Id*. The Court held the amended complaint failed to allege any intelligible clue as to the scope and duration of the enterprise itself. *Id*. The facts in this case are much different than *Stachon*. As already discussed, the TAC offers and provides a command structure. (TAC ¶¶ 226-238, 246-253) The TAC establishes how the members of the RICO Enterprise have functioned since 2002 as an ongoing structured organization. Each member of the Enterprise is clearly identifiable by Google, subject to written rules and regulations promulgated by Google (TAC ¶¶230, 252), contractually bound to perform according to Agreements with Google (TAC ¶¶ 230-232), and only provided an opportunity to participate in the Enterprise with Google's permission (TAC ¶¶ 230, 231). The very organized structure, and control exerted by Defendant Google through control of the Google AdWords advertising (TAC ¶ 232) and control over membership/participation in the Enterprise, is very distinct from the facts in *Stachon*, where United Consumers Club had unorganized business dealings with many unnamed entities.

e. Conduct of the Enterprise

The TAC alleges that the goal of the RICO enterprise is to "obtain maximum economic an commercial gain by providing internet advertising an marketing services to AdWords Advertisers" (TAC ¶ 222), and that members participate in the Enterprise to further the purpose of generating revenue from services provided in connection with the AdWords Advertisements placed/displayed on domains/sites/video/search results under their license, control and/or ownership (TAC ¶ 226(b)). Defendants conduct the affairs of the RICO Enterprise with the deliberate intent of obtaining commercial gain from the illegal Deceptive Domain Scheme. (TAC ¶ 242). Each participant in the RICO Enterprise advances, permits, and/or participates in the unlawful conduct of the RICO Enterprise in one or more ways, including but not limited to the following:

a. Defendant Google organizes, selects and controls membership in, promulgates terms and conditions of participation in, enters into express agreements/contracts with all members, designs and controls all technology, and

b. Google Network tastes domains, registers domains, aggregates domains, licenses domains and sites, contracts/associates with Domain and site owners/ registrants for the monetization of domains, engages in optimization and hosting, assist in the marketing, development and optimization of domains/sites under their control (such as landing page design), assist in the procurement, collection and distribution of advertising/marketing revenue throughout the Enterprise, and/or otherwise participate in the operations of the RICO Enterprise subject to the terms and conditions mandated by Defendant Google.

See TAC ¶ 240.

The TAC further alleges that the RICO Enterprise provided Defendants with the much needed vehicle and system that would allow Defendants to develop, monitor, calculate, divert and otherwise control a large segment of the online/Internet electronic commerce, marketing, promotions, sales, and advertising market, in order to use such to obtain revenues that were not obtainable through legal means. (TAC ¶ 243). Importantly, the RICO Enterprise also engages in legitimate business endeavors such as monetizing legitimate websites (TAC ¶ 241).

The Supreme Court in *Reves v. Ernst & Young,* 507 U.S. 170 (1993), has held the word "conduct" in 18 U.S.C. § 1962(c) requires some degree of direction. *Reves*, 507 U.S. at 178. The Court also held in *Reves* that an enterprise is operated not just by upper management but also lower rung participants in the enterprise who are under the direction of upper management. *Id.* at 1173.

A cursory review of the TAC establishes the invalidity of Defendants' argument that the TAC fails to allege that Defendants participate in the direction of the Enterprise. *For example, the TAC plainly states that:* Google controls membership and participation in the Google Network. (TAC ¶ 232), the Parking Company Defendants can license with third parties so that third party domains/sites can participate in the Google Network derivatively. (TAC ¶ 234), the Parking Company Defendants have, either directly or indirectly, entered into contractual agreements with Defendant Google, that govern the terms, conditions, rights, and responsibilities associated with participation in the AdSense Network/Google Network (TAC ¶ 236), that Defendant Google and Parking Company Defendants knowingly conduct and or participate, directly and/or indirectly, in the conduct of the affairs of the Enterprise though a pattern of racketeering activity (TAC ¶ 239), that each Defendant tastes domains, registers domains, aggregates domains, licenses domains and sites, contracts/associates with Domain and site owners for the monetizations of domains, engages in optimization and hosting, assist in the marketing, development and optimization of domains/sites under their control (TAC ¶ 240(b)). Furthermore, ¶ 244 of the TAC provides eighteen (18) different specific examples of "how" Defendants exert control over, and otherwise operate and conduct the affairs of the RICO Enterprise. (TAC ¶ 244). The well plead allegations of the TAC more than satisfy the requisite pleading requirements to establish that each Defendant exercises some degree of control over the participation and operation of the Enterprise.

2. Plaintiffs have plead a pattern of racketeering activity and the predicate acts with particularity.

Pursuant to Rule 9(b) it is sufficient that a RICO Plaintiff adequately describes the alleged scheme to defraud, the nature of the misrepresentation, the individuals involved, how the mails were used to further the scheme, and the kinds of communications that were mailed/wired. *Ferleger v. First American Mortg. Co.,* 62 F.Supp 584, 588 (N.D. Ill. 1987), citing *e.g., Morgan v. Korbin Securites, Inc.,* 649 F.Supp 1023, 1028-29 (N.D. Ill. 1986). Rule 9(b) does not require a plaintiff to specifically describe each mailing in the complaint. *See,* e.g., *Haroco,* 747 F.2d at 405.

The RICO "plaintiff must, within reason, describe the time, place, and content of the mail and wire communications, and it must identify the parties to these communications." *See Jepson,* 34 F.3d at 1328. Likewise, the sufficiency of a pleading under Rule 9(b) varies with the complexity of the transaction, and less specificity is required when the transactions are numerous and take place over an extended period of time. *Fulk v. Bagley,* 88 F.R.D. 153, 165 (M.D.N.C. 1980). "The key question is whether each defendant is given sufficient notice of their respective roles in order that they may answer the complaint." *P&P Marketing Inc. v Ditton,* 746 F.Supp. 1354, 1362 (N.D. Ill. 1990).

In RICO claims relating to mail fraud and wire fraud, the courts often relax the Rule 9(b) pleading requirements when the information necessary to plead with the requisite particularity is within the exclusive control of the defendants pending further discovery, "because of the apparent difficulties in specifically pleading mail and wire fraud as predicate acts." See *New England Data Services, Inc. v. Becher*, 829 F.2d 286, 290-91 (1st Cir. 1987). *See also North Bridge Assoc., Inc. v. Boldt,* 274 F.3d 38, 44 (1st Cir. 2001) (noting that where "the specific information [concerning the defendants' use of interstate mail or telecommunications facilities] is likely in the exclusive control of the defendant, the court should make a *second* determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint")(quoting *Feinstein v. Resolution Trust Corp.,* 942 F.2d 34, 43 (1st Cir.1991)). The Seventh Circuit has recognized the need to relax Rule 9(b)'s pleading requirements in the RICO context. See *Corley v Rosewood Care Center Inc.,* 142 F.3d 1041, 1051 (7th Cir. 1998).

In *Corley,* the plaintiff generally identified the content of allegedly fraudulent communications, but was frequently unable to state the specific time or place that a communication was made, nor was plaintiff able to identify the particular recipient to whom the communication was directed. *Id*. at 1051. Plaintiffs' complaint, however, maintained that such specific information was in the hands of defendants. *Id*. The *Corley* Court noted on a number of occasions the particularity requirement of Rule 9(b) must be relaxed where the plaintiff lacks access to all facts necessary to detail his claim, and the plaintiff alleges a fraud against one or more third parties. *Id*. *See also Schiffels v. Kemper Fin. Serv., Inc.,* 978 F.2d 344, 353 (7th Cir.1992); *Uni*Quality v. Infotronx, Inc.,* 974 F.2d 918, 923 (7th Cir. 1992); *see also Jepson,* 34 F.3d at 1328; *Arenson v. Whitehall Convalescent and Nursing Home, Inc.,* 880 F.Supp. 1202, 1208 (N.D. Ill. 1995).

The *Corley* Court concluded the complaint identified certain other residents to whom the various misrepresentations were communicated, and detailed the circumstances of the alleged frauds to those residents with sufficient particularity. *Corley,* 142 F.3d at 1051. However, the Court held Rule 9(b)'s particularity requirement must be relaxed if the plaintiff did not have access to discover the information that would identify the particulars to the other unknown residents/recipients. *Id.*

Class Plaintiffs have pled with sufficient particularity the following predicate acts: 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud); 18 U.S.C. § 1952 (relating to racketeering); 18 U.S.C § 1957 (related to engaging in monetary transactions in property derived from specified unlawful activity) and 18 U.S.C. § 2320 (relating to trafficking in goods or services bearing counterfeit marks).

a. Mail and Wire Fraud

To establish the predicate acts of mail and wire fraud sufficient to support a civil RICO claim, Class Plaintiffs must only allege "(1) a scheme or artifice to defraud or with intent to defraud; (2) through a deception about a material fact; and (3) the use of the mails (or interstate telecommunication) to further the fraud." *Corley v. Rosewood Care Center, Inc.,* 152 F.Supp.2d 1099, 1108 (C.D.Ill. 2001), citing 18 U.S.C. §§1341 and 1343. The TAC specifically sets forth the necessary allegations of fraud, concealment, omission and misrepresentations, that are central to the Deceptive Domain Scheme, and that Defendants' ability to derive financial gain from the scheme is dependent upon the successful actuation of the fraud/deception/misrepresentation. (TAC ¶ 118, 152). The specific fraudulent actions include, however are not limited to, registration/utilization/monetization of the Deceptive Domains, masking, redirecting, utilization of false identities, and other related acts of concealment (TAC ¶¶ 152) The Deceptive Domain Scheme is primarily effectuated through the internet (TAC ¶ 256), through automated systems (TAC ¶ 152) and other such wire and mail communication (TAC ¶¶ 256-261). The Deceptive Domain Scheme could not be accomplished without the use of the internet, wire and mails (TAC ¶¶ 256-274).

The mail and wire fraud statutes 18 U.S.C. §1341 and §1343, define "a fraudulent *scheme*, rather than a particular false statement, as the crime. *Phoenix Bond & Indemnity Co. v. Bridge*, 477 F.3d 928, 932 (7th Cir. 2007) (holding *"that's why it is* ***unnecessary*** *to show that the false statement* ***was made to the victim.*** *A scheme that injures D by making false statements through the mail to E is mail fraud, and actionable by D through RICO if the injury is not derivative of someone else's. So we held in both In re EDC, Inc., 930 F.2d 1275, 1279-80 (7th Cir. 1991) and Israel Travel Advisory Service, Inc. v. Israel Identity Tours, Inc., 61 F.3d 1250, 1257 (7th Cir. 1995) and we see no reason to change course.* Three other circuits that have considered this question agree with our conclusion that the direct *victim* may recover through

RICO whether or not it is the direct *recipient* of the false statements. See *Mid Atlantic Telecom, Inc. v Long Distance Services, Inc.,* 18 F.3d 260, 263-64 (4th Cir. 1994); *Systems Management, Inc. v. Loiselle,* 303 F.3d 100, 103-04 (1st Cir. 2002); *Ideal Steel Supply Corp. v. Anza*, 373 F.3d 251, 263 (2nd Cir. 2004), reversed on other grounds, 547 U.S. 451 (2006).") (Emphasis added).

It is also well established that "a mailing or wiring itself, for example, does not have to contain false or misleading information." *Shapo v. O'Shaughnessy,* 246 F.Supp.2d 935, 957 (N.D. Ill. 2002) (citing *United States v. Hickok,* 77 F.3d 992, 1005 (7th Cir. 1996)). "The mailings do not even need to cause pecuniary loss on their own". *Id.* (citing, *United States v. Brocksmith,* 991 F.2d at 1363, 1368 (7th Cir. 1993)). The mail and wire communications only need to be in furtherance of the scheme. *Id.*

In this case, Class Plaintiffs have specifically pled the Deceptive Domain Scheme was carried out, on an ongoing and repeated basis, through the use of the mails and wire. (TAC ¶¶ 257-277) Numerous predicate acts of mail and wire fraud including, but not limited to:

Fraudulent Action	**Method/Manner**	**TAC ¶ #**
Using software and automated programs to identify revenue generating Deceptive Domain Names	Wire – electronically, on the internet with automated software	139, 152, 244, 289, 440
Using software to capture slight misspellings or keystroke errors to capture and redirect Internet traffic to Deceptive Domains and away from the Internet user's intended site, thus diverting traffic away from Class Plaintiffs' and the Class's valuable marks and causing confusion, dilution, and misuse/misappropriation of Class Plaintiffs' and other members of the Class's Distinctive and Valuable Marks.	Wire – electronically, on the internet with automated software	244, 289
Registered Deceptive Domains	Wire- electronically, on the internet with automated software	210, 289
Tasted Deceptive Domains	Wire – electronically, on the internet with automated software	152, 210 240, 275, 289, 440
Kited Deceptive Domains	Wire – electronically, on the internet with automated software	152, 210, 240, 275 289, 440
Licensed Deceptive Domains	Wire – electronically, on the internet with automated software. Also, through mails.	152, 210 264, 275, 289, 440

Parked Deceptive Domains	Wire – electronically, on the internet with automated software	152, 210 289
Associated Google Advertising with Deceptive Domains	Wire – electronically, on the internet with automated software	152, 210, 244, 289, 440
Collected revenue from advertising on Deceptive Domains	Wire – electronically, on the internet with automated software	260, 265, 269, 275
Distributed revenue from advertising on Deceptive Domains	Wire – electronically, on the internet with automated software	260, 269, 273, 275
Advertised for participation of Deceptive Domains in Google Advertising	Wire – electronically, on the internet with automated software	262, 264
Generate Deceptive Domain performance reports and distribute those reports	Wire – electronically, on the internet with automated software	260
Hosting websites associated with Deceptive Domains	Wire – electronically, on the internet with automated software	266
Concealment of the Deceptive Domain Scheme by using encryption and/or disabling the "View Source" functions at the Deceptive Domains	Wire – electronically, on the internet with automated software	289
Use of false and misleading WhoIs domain registration data in an attempt to conceal their participation in the Deceptive Domain Scheme	Wire – electronically, on the internet with automated software	271, 289
Use of semantics programs, algorithms, and other intellectual electronic programs designed and intended to maximize revenue from the placement of advertisements on Deceptive Domains to capture and redirect Internet traffic away from the legal and rightful owners of the Distinctive and Valuable Marks and send it to advertisers and competitors that participate in the "pay per click" advertising programs	Wire – electronically, on the internet with automated software	289

Clearly, these predicate acts adequately describe the alleged scheme to defraud, the nature of the misrepresentation, the individuals involved, how the mails/wire were used to further the scheme, and the kinds of communications that were mailed/wired. It is disingenuous for Defendants to suggest they have not received sufficient notice of their respective roles in order to answer the TAC.

Despite the TAC providing the Defendants with extensive details concerning their involvement in the Deceptive Domain Scheme, they assert the allegations concerning the predicate acts are deficient as it relates to time, place, content, method and the identity of parties. This assertion ignores the fact the Deceptive Domain Scheme is a real time, 24 hour, 7 days a week perpetual venture. (TAC ¶¶ 254, 276) As is common in a RICO case involving ongoing mail and wire fraud, much of the information regarding the timing, place, content of these predicate acts are within the control of the defendants. Accordingly, the pleading requirements of Rule 9(b) should be relaxed in these circumstances.

b. Predicate acts Under Sections 2320 and 1957

Defendants sole argument regarding the allegations of a violation of 18 U.S.C. § 2320 is that Class Plaintiffs failed to specify the goods and services at issue, and failed to explain how Defendants transported or transferred any such goods within the meaning of § 2320. Once again, Defendants' argument ignores the specific factual allegations in the TAC. For example, ¶ 276 of the TAC alleges that Defendants, in effectuating the Deceptive Domain Scheme, knowingly traffic in good or services bearing counterfeit marks. The TAC specifically identifies the "Deceptive Domain" as the mislabeled/counterfeit product or service. (TAC ¶ 83(A)) and further explains that the Deceptive Domain is then used in the provision of advertising services in order to mislead internet users, divert internet traffic, and otherwise generate revenue from the wrongful use of Class Plaintiffs' and putative class members distinctive and valuable marks. (TAC ¶¶ 152, 275, 276).

Defendants also argue the TAC fails to plead the required elements under 18 U.S.C § 1957, because the incorporated mail and wire fraud allegations are insufficient. As demonstrated herein, Class Plaintiffs adequately pled the mail and wire fraud allegations (TAC ¶¶ 257-271, 273), and have alleged the requisite facts establishing the predicate acts under § 1957. Class Plaintiffs specifically allege that Defendants knowingly engage, on a daily basis, in monetary transactions in unlawfully derived property (derived from mail and wire fraud, criminal deprivation of property, and the trafficking in counterfeit goods in services) of a value greater than $10,000. (TAC ¶ 275).

c. Predicate Acts Under Section 1952.

The TAC sets forth the essential elements of predicate acts under Section 1952. The TAC alleges: (1) Defendants use mails or travels in interstate commerce(TAC ¶¶ 257-271 273), (2) for the purpose of distributing the proceeds of an unlawful activity and/or to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity (TAC ¶¶ 273-275). Defendants conveniently ignore the plain language of 18 U.S.C. §1952(b)(i)(3) which defines illegal activity as including: "(a)ny act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under Section 1956 or 1957 of this title". Sections 1956(1) and (7)(A) and (D) define the type/scope of unlawful activity as follows:

> (1) the term "knowing that the property involved a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or Foreign law, regardless of whether or not such activity is specified in paragraph (7); and
>
> (7) the term "specified unlawful activity" means—
>
> (A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31
>
> (D)…..section 2320(relating to trafficking in the counterfeit goods and services).

18 U.S.C. §§ 1956(1), 7(A), 7(D)

Consistent with this plain language, Class Plaintiffs alleged facts establishing the Defendants' Deceptive Domain Scheme included: action indictable under the mail and wire fraud statute and violations of section 2320 (relating to trafficking in counterfeit goods and services). (TAC ¶ 276). The TAC plainly sets forth a system whereby Defendants "transact" in money obtained from the Deceptive Domain Scheme using mails, wires, and interstate commerce. (TAC ¶¶ 260, 358). Defendants engage in this scheme for the express purpose of their financial gain (TAC ¶¶ 152, 154). It is further alleged Google collects, deposits and distributes advertising revenue from participating advertisers throughout the United States (TAC ¶ 7). Then Google transfers said advertising revenue to parking companies (including the Parking Company Defendants) and domain owners, who in turn, transfer the money to other third parties such as smaller domain owners. (TAC ¶ 7). Class Plaintiffs allege that said transactions are done using wire and mail. (TAC ¶ 260).

3. Plaintiffs' mail and wire fraud allegations are sufficient.

Defendants cite a host of cases for the proposition courts reject efforts to concoct RICO claims by reformulating garden variety infringement claims as mail or wire fraud. The problem however, is not the case law Defendants cite, but its application to the allegations in the TAC. Defendants again fail to acknowledge that the TAC sets forth with careful specificity, and with more than sufficient detail, the specifics of the Deceptive Domain Scheme that are far above and beyond a straight forward infringement claim.

While the Deceptive Domains are "central" to Defendants massive scheme to generate and transact in money form the knowing diversion of and monetization of internet traffic, (TAC ¶ 2) the Deceptive Domains are part of a much wider scheme that is effectuated through automated systems that depend upon utilization of the mails and wire. (TAC ¶¶ 1, 4, 257-271, 273) Defendants attempt to disavow the widespread deception and misrepresentations associated with the Deceptive Domain Scheme by claiming the TAC is only "sprinkled" with such references. However, the TAC makes it abundantly clear this deception and misrepresentation pervades the Deceptive Domain Scheme (See TAC ¶ 3, 7, 142-152, 178-191, 199-210). For example, Defendants taste, kite, register, license and monetize Deceptive Domains (TAC ¶ 152(a)) and redirect internet traffic to these Deceptive Domains containing advertisements (TAC ¶ 152(b)). To maximize their revenue on these advertisements placed on the Deceptive Domains, Defendants use semantics programs, algorithms, statistical tools and other software by "intelligently placing" advertisements an internet user might be interested in based upon the real domain he was attempting to access (TAC ¶ 152(c)). Defendants also redirect internet traffic to these links/advertisements and away from the rightful owners while at the same time using misleading domain registration data in an attempt to conceal their identities. (TAC ¶ 152(d), (e)). This type of deception cannot reasonably be characterized as a simple infringement claim.

In addition, the civil RICO provision contains an express "RICO bar" that excludes claims if the conduct "would have been actionable as fraud in the purchase or sale of securities." 18 U.S.C. § 1964(c). Such a bar is not implicated in this case. Congress obviously recognized some claims should not proceed under RICO. Congress did not exclude from RICO trademark/cybersquatting/typosquatting claims and could have if it so intended.

Consistent with this intention, courts have acknowledged the ability of plaintiffs to simultaneously pursue RICO and intellectual property claims. *See, e.g., Galerie Furstenberg v. Coffaro,* 697 F.Supp. 1282 (S.D.N.Y. 1998) (sustaining RICO claims at the motion to dismiss stage based on predicate acts of mail and wire fraud where Defendants' scheme primarily involved the copying and sale of counterfeit Salvador Dali prints). *See also Internet Archive v. Shell,* 505 F.Supp.2d 755 (D. Colo. 2007); *Information Exchang*e *Systems, Inc. v. First Bank Nat. Ass'n,* 1992 WL 494607 (D. Minn 1992); *Dell, Inc. v Solares, et al.,* Case No 07-2668 (E.D. La., April 26, 2007).

4. Plaintiffs have alleged that the object of the Fraud was property or money in the hands of Class Plaintiffs

In order to adequately allege mail and wire fraud, Class Plaintiffs must allege that "the object of the fraud" is "money or property in the victims' hands." *Pasquantino v. U.S.,* 554 U.S 349, 355 (2005). In the TAC, Class Plaintiffs have made such allegations in connection with their mail and wire fraud predicate acts. (TAC ¶ 277)

The fundamental flaw in Defendants' argument is the notion that internet users are the sole victims of the fraud, and therefore Class Plaintiffs need to allege the object of the fraud was money or property in the hands of the internet users. In making this contrived argument, Defendants ignore the plain language of the TAC that sets forth the Defendants critical step in generating advertising revenue is the *acquisition of property belonging to Class Plaintiffs and the putative class, for the express purpose of utilizing said property for their own financial gain.* (TAC ¶¶ 2, 3, 128). It is the Class Plaintiffs and putative class that are victimized by the Deceptive Domain Scheme, because it is their property that is being taken, diluted, monetized and otherwise used without their authorization and consent. (TAC ¶¶ 1-5, 11).

In order to make money from the Deceptive Domain Scheme, Defendants must use Class Plaintiffs' and putative class members' domains, distinctive and valuable marks, goodwill, internet traffic, customers and prospective business. (TAC ¶¶ 1-3, 296). Class Plaintiffs and the putative class member's domains, Distinctive and Valuable Marks, goodwill, internet traffic, customers and prospective business are the very "property," the "object of the fraud" that

Defendants desire, because Defendants can only make money by first monetizing said property. (TAC ¶¶ 1-3, 11, 12).

Distinctive and valuable marks are property and well-recognized as a valuable business asset. *F.T.C. v. Royal Milling Co.,* 288 U.S. 212, 217 (1983); see also *Old Dearborn Dist. Co. v Seagram-Distillers Corp.,* 299 U.S. 183, 195 (1936). Loss, taking, diminution, infringement are well-recognized as causing direct injury to property and business (*Citizens Financial Group, Inc. v. Citizens Nat. Bank of Evans City,* 383 F.3d 110, 131 (3rd Cir. 2004)). Further, a domain name is valuable property. *Porsche Cars North America, Inc. v Porsche.net,* 302 F.3d 248, 260 (4th Cir. 2002); *Office Depot v. Zuccarini*, 2007 WL 2688460, *3 n.7 (N.D.Cal. 2007); *Express Media Group, LLC v. Express Corp.,* 2007 WL 1394163, *3 (N.D.Cal. 2007); *Mattel, Inc. v. Barbie-Club.com,* 310 F.3d 293, 300 (2nd Cir. 2002). Unauthorized use of domain names is well-recognized to constitute direct injury to business and property. *Station Casinos, Inc. v. Domain Magic, LLC,* 2006 WL 3838221 (D.Nev. 2006); *People for Ethical Treatment of Animals, Inc. v. Doughney,* 113 F.Supp.2d 915, 920 (E.D.Va. 2000); *Playboy Enterprises, Inc. v. Netscape Communications Corp.,* 354 F.3d 1020, 1024-1026 (9th Cir. 2004); *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002 (9th Cir. 2004); *PACCAR Inc. v. Telescan Technologies, LLC,* 319 F.3d 243 (6th Cir. 2003).

Further, the actual "Deceptive Domains" are the property of the Class Plaintiffs and putative class members, as is evidenced by the clear Congressional intention to treat domain names as property for purposes of the ACPA's *in rem* provisions. *See* 145 Cong. Rec. at S10629-01; *see also Lands End, Inc. v. Remy,* 447 F.Supp.2d 941 (W.D.Wis. 2006). In fact, one of the remedies under the ACPA (and the only remedy in a UDRP proceeding) is return of the title to the domain to the Plaintiff. 15 U.S.C. §1129(2). Courts applying the ACPA have determined that defendants that have never used infringing domain names as trademarks or service marks have no property rights in the domains. *Station Casinos v. Domain Magic LLC*, 2006 WL 3838221 (D.Nev. 2006). The possession and use of the Deceptive Domain causes direct injury to the Class Plaintiffs and the putative class members.

Internet traffic is also a valuable property/business interest, and courts recognize the direct injury to plaintiffs from said misappropriation (taking) and use. *Victoria's Secret Stores v. Artco Equipment Co., Inc.,* 194 F.Supp.2d 704, 722-23; *Playboy*, 354 F.3d at 1024-26; *Nissan,* 378 F.3d 1002; *Paccar,* 319 F.3d 243. The taking of internet traffic has been recognized as causing substantial injury to a mark and affecting the ability of the rightful owner to utilize the selling power of the correct domain and/or Distinctive and Valuable mark. *People for Ethical Treatment of Animals, Inc.,* 113 F.Supp.2d at 920, *citing Planned Parenthood Federation of America v. Bucci,* 42 U.S.P.Q.2d 1430, 1435 (S.D.N.Y.)*; Jews for Jesus v. Brodsky,* 993 F.Supp. 282, 309 (D.N.J. 1998).

Goodwill is a long-recognized as "property" and a valuable business asset. *Gateway Eastern Ry. Co. v. Terminal R.R. Ass'n of St. Louis,* 35 F.3d 1134, 1140 (7th Cir. 1994); *SCA Services of Indiana, Inc. v Thomas,* 634 F.Supp. 1355, 1362 (N.D.Ind. 1986). Lost/diminished goodwill is a taking and constitutes direct injury to Class Plaintiffs and the putative class members' business and property. *Gateway Eastern Ry. Co.,* 35 F.3d 1140; *see also WMX Technologies, Inc. v. Miller,* 80 F.3d 1315, 1318-1320 (9th Cir. 1996). Likewise, business opportunities, customers, and prospective business are important property interests and their loss or diminution constitutes direct injury to Class Plaintiffs and the putative class members business and property. *Phoenix Bond*, 477 F.3d at 928; *Israel Travel Advisory Service, Inc. v. Israel Identity Tours, Inc.,* 61 F.3d 1250 (7th Cir. 1995).

Defendants' object of the fraud was property in the hands of the Class Plaintiffs and putative class members. Class Plaintiffs and putative class members are the primary victims of the Deceptive Domain Scheme, not the internet users as suggested by Defendants.

5. Defendants' misconduct is the proximate cause of Plaintiffs injuries.

As set forth above, Class Plaintiffs are the legal property owners of Distinctive and Valuable Marks goodwill, internet traffic and prospective business. (TAC ¶¶ 22, 31, 42, 63, 199-207) The unauthorized use of Class Plaintiffs' and the putative class members' property directly and proximately injures Class Plaintiffs and the putative class members in several ways, including but not limited to: (a) identifying, registering, tasting and kiting Deceptive Domains that belong to Class Plaintiffs and the putative class member (TAC ¶ 3, 185, 186); (b) monetizing Deceptive Domains that belong to Class Plaintiffs and the putative class members (TAC ¶ 240(b)); (c) hijacking, capturing, and redirecting internet traffic that belongs to Class Plaintiff and the putative class member (TAC ¶3, 178, 179); (d) taking valuable prospective business opportunities, sales and customers that belong to the Class Plaintiffs and the putative class members (TAC ¶¶ 199-207); and (e) using the goodwill that belongs to Class Plaintiffs and the putative class members (TAC ¶ 296)

Despite these explicit allegations of injury in the TAC, Defendants incorrectly assert Class Plaintiffs' injuries are derivative of injury causes to internet users. The TAC specifically alleges the Defendants' actions have caused injury to Class Plaintiffs' business and property by taking and using without authorization Class Plaintiffs' Distinctive and valuable marks, domains, internet traffic, customers and prospective business – thus, depriving them of their property, diminishing the value of their property, causing lost reputation, lost goodwill, lost profits, sales, revenue, and related business interests (TAC ¶ 296). Any argument by Defendants that Class Plaintiffs' injuries are not direct, but rather derivative, is again a disputed issue of material fact that is untimely and improper at this stage in the litigation.

Further, Defendants' argument that Class Plaintiffs' injuries are derivative is inapposite to well-established 7th Circuit law as explicated in *Phoenix Bond & Indemnity Co. v. Bridge et al.,* 477 F.3d 928 (7th Cir. 2007). In *Phoenix Bond* defendants allegedly manipulated the process used by Cook County, Illinois to award bids for the purchase of property tax liens from Cook County by arranging for related firms to bid on the same parcel, the defendants allegedly increased the share of parcels they received. *Id.* at 930. To effectuate this scheme, it was alleged the defendants submitted false affidavits to the County through the mail. *Id.* at 930. The Seventh Circuit held that even though the plaintiffs were not the recipients of the misrepresentations, their injury was proximately caused by the defendants conduct because "Extra bids reduce plaintiffs' chance of winning any given auction, and a loss of a (valuable) chance is real injury." *Id.* at 930-932. The Court rejected the defendants' argument that the County was the direct victim of the fraud. *Id.* at 931. The relevant inquiry to determine proximate cause is "whether the alleged violation led directly to the plaintiffs injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 459 (2006); *see also Commercial Cleaning Services, LLC v. Colin Service Systems, Inc.,* 271 F.3d 374, 381-382 (2nd Cir. 2001). Similarly, in this case, Class Plaintiffs and the putative class members are directly injured by Defendants' conduct in taking, using, and monetizing their property without their permission.

In an attempt to fit the facts of this case within *Israel Travel*, Defendants argue that "Plaintiffs allege that Defendants perpetrated a fraud on internet users attempting to reach web pages owned and controlled by Plaintiffs and other putative class members" making the internet users the direct victim. (Memorandum in Support of Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pg. 22). Such an argument mischaracterizes the TAC. The TAC alleges that Defendants perpetrated a fraud on *Class Plaintiffs and other putative class members* by identifying, registering, using, monetizing Deceptive Domains (domains created to capture/infringe/dilute the distinctive and valuable marks and goodwill belonging to Class Plaintiffs and the Class (TAC ¶¶ 2, 152, 368), and by diverting internet traffic (also belonging to and property of Class Plaintiffs and the putative class) away from their legitimate domains. (TAC ¶ 3, 373). As a result, Class Plaintiffs suffered injury to their respective businesses and property from the unauthorized use of their distinctive and valuable marks, domains, goodwill, internet traffic, customers, and resulting prospective business/sales (TAC ¶¶ 11, 12, 211) These injuries suffered by Class Plaintiffs and the putative class members are wholly separate and distinct from any injury suffered by internet users. As such, Defendants' reliance on *Anza* is equally misguided.

Defendants correctly state "In *Anza v. Ideal Steel Supply Corp.,* 547 U.S. 451, 459 (2006) the Court concluded that a plaintiff who had lost market share or a competitive advantage as a result of an alleged scheme to defraud a third party count not maintain a RICO action. *Id.* at. 459-460." As discussed, in the instant case Defendants perpetrated a fraud on the Class Plaintiffs and other putative class members, and not a third party, as in *Anza.*

Defendants claim that Plaintiffs did not allege "reliance" on the purported fraud suffers from the same fundamental flaw. Defendants continue to focus on the fraud they perpetrate on internet users, while conveniently ignoring their conduct as it relates to Class Plaintiffs and the putative class members. Defendants go so far as to state "Plaintiffs do not allege that they, internet users, or anyone else, actually were deceived into believing that any domain owned or operated by Defendants actually was owned or operated by Plaintiffs". (Memorandum in Support of Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pg. 21). Class Plaintiffs need not allege such a belief. The fraud perpetuated through the Deceptive Domain Scheme does not focus on whether internet users were tricked into believing they were visiting sites owned or operated by Plaintiffs. It is the fact internet users are hijacked and diverted by the improper use of plaintiffs valuable and distinctive marks that establishes reliance. Importantly, the TAC does allege initial interest confusion and dilution. (TAC ¶¶ 385, 411-423) Inherent in the Deceptive Domain Scheme, as alleged in the TAC, is Defendants' wrongful use of Class Plaintiffs property to economically benefit from valuable marks/property of the Class Plaintiffs and putative class members. (TAC ¶¶ 1-3).

6. Plaintiffs have plead a claim under RICO section 1962(a).

18 U.S.C. §1962(a) provides:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

Class Plaintiffs sufficiently plead facts establishing the requisite elements of a Section 1962(a) claim. Defendants' argument that Class Plaintiffs failed to adequately allege a RICO Enterprise for their section 1962(a) claim fails for the same reasons already stated herein. Defendants' other argument is equally unavailing in that it erroneously contends that the TAC fails to allege the racketeering income was used in the establishment or operation of an enterprise.

Defendants simply ignore the myriad allegations of the TAC alleging that the Defendants are profiting and deriving commercial gain from the illegal conduct, the Deceptive Domain Scheme, (TAC ¶¶ 1-4, 10, 125, 132, 152) while at the same time conducting legitimate internet advertising (TAC ¶ 223, 241), and that Defendants then use or invest the income from their pattern of racketeering activity in the establishment or operation of the Enterprise. (TAC ¶ 338). Plaintiffs have adequately stated a claim under § 1962(a).

Defendants also argue plaintiffs failed to allege and injury directly caused by their use or investment of the racketeering income thereby invoking the "investment injury rule." Defendants concede that the Seventh Circuit has not expressly adopted the "investment injury rule" under section 1962(a). In *Busby v. Crown Supply, Inc.,* 896 F.2d 833, 837-838 (4th Cir. 1990), the court engaged in a detailed analysis of the investment injury rule.

The *Busby* Court concluded the investment injury rule was flawed based upon the statutory language along with the goals of the RICO and the Supreme Courts' analysis of §§1962 and 1964(c). *Id. at 838-839.* Indeed, Courts in this District have repeatedly concluded that the rule adopted by *Busby* is more persuasive. See *Goold Electronics Corp. v. Galaxy Electronics, Inc.*, 1993 WL 427727, *2 (N.D. Ill. 1993) (stating "…having examined this issue in previous cases, this court continues to be of the view that this **minority** position is the more persuasive. Under that view, a plaintiff has standing to bring a §1962(a) claim as long as it has been injured by a predicate act. *Mid-State Fertilizer Co. v. Exchange Nat'l Bank of Chicago,* 693 F.Supp. 666, 672-73 (N.D.Ill.1988), *aff'd on other grounds,* 877 F.2d 1333 (7th Cir.1989); *see also In re ContiCommodity Svcs., Inc. Sec. Litig.,* 733 F.Supp. 1555, 1566 (N.D.Ill.1990), *rev'd in part on other grounds, sub nom., Brown v. United States,* 976 F.2d 1104 (7th Cir.1992);") *see also In re Managed Care Litigation,* 150 F.Supp.2d 1330, 1351 (S.D. Fla. 2001) (stating "a separate investment injury requirement, together with the section 1962(c) person/enterprise distinction, would eviscerate corporate liability because it is nearly impossible to prove that the injury flowed from investment given that the predicate acts usually produce the injury sued upon." (citing *Busby, 896 F.2d at 838-839)).* Thus, as Plaintiffs have adequately pled injuries as a result of the predicate acts alleged in the TAC their claim under section 1962(a) is viable.

Allegations that the RICO predicate acts have caused injuries to Class Plaintiffs do not foreclose a viable claim under Section 1962(a). Essentially, Defendants argue that because Class Plaintiffs pled an injury as a direct and proximate result of Defendants' patterns of racketeering activity (TAC ¶ 339) they may not pursue a claim under § 1962(a). Even if this Court chose to follow the "investment injury rule" it would not foreclose a section 1962(a) claim. Defendants express an inaccurate understanding of "proximate cause" in advancing this argument.

Civil RICO is a statutory tort and as such causation principles that generally apply in tort cases apply in a Civil RICO cases. *Reynolds v. East Dyer Development Co,* 882 F.2d 1249, 1253 (7th Cir. 1989). It is well established in Illinois that "proximate cause" is not the equivalent to "sole cause" and there may be more than one proximate cause of an injury. *Espinoza v. Elgin Joliet & Eastern Ry. Co.,* 649 N.E.2d 1323, 1328 (Ill. 1995). Accordingly, pleading the racketeering activity was a proximate cause of an injury does not foreclose that there may be other activity that is also a proximate cause of the same injury.

7. Class Plaintiffs have adequately pled a RICO conspiracy.

Section 1962(d) makes it illegal for a person "to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U.S.C. 1962(d); *Beck v. Prupis,* 529 U.S. 494, 500 (2000). RICO's conspiracy provision requires an agreement to violate the substantive provisions of RICO. *See* 18 U.S.C. §1962(d); *Goren v. New Vision Intern., Inc.*, 156 F.3d. 721, 731. (7th Cir. 1998). Contrary to Defendants' argument, Plaintiffs have pled an agreement to violate RICO's substantive provisions and, as discussed previously, the required underlying elements of those violations. (TAC ¶ 351-361).

In the instant case, the "agreement to violate" and RICO conspiracy is illustrated by the express, cohesive, and collective actions of Defendants in furtherance of the Deceptive Domain Scheme: their express agreements (TAC ¶¶ 134-137), the knowing monetization of Deceptive Domains, (TAC ¶ 142) and the transaction (division of profits) in money generated from the unlawful use of the Deceptive Domains. (TAC ¶ 152(i)). The TAC is replete with specific factual allegations establishing the knowing and voluntary agreement/conspiracy, including but not limited to:

1. Defendants enter into express written agreements detailing the terms and responsibilities associated with their conduct (TAC ¶¶ 134-137)

2. Parking Company Defendants knowingly register/license Deceptive domains and then enter into agreements to monetize (and share revenue from the monetization) those Deceptive Domains with Google Advertising (TAC ¶¶ 145, 152(i))

3. Defendants each use sophisticated software to identify, taste, kite, register and monetize Deceptive Domains (TAC ¶¶ 1, 3, 5, 152(c))

4. Parking Company Defendants mask Google association to certain parked Deceptive Domains that contain Google advertising (TAC ¶¶ 118, 119, 180) and

5. Google collects the advertising revenue generated from the advertisements on Deceptive Domains, and then divides it up with Parking Company Defendants (TAC ¶¶ 7, 283)

The plain language of the TAC contains very specific actions and conduct evidencing the furtherance of the conspiracy and the knowing intent/participation of each Defendant in the conspiracy. Plaintiffs have satisfied the pleading requirements for a claim under section 1962(d).

B. Class Plaintiffs have stated claims for unjust enrichment and civil conspiracy.

An unjust enrichment claim exists where the defendant procured a benefit through some type of wrongful conduct, and it would be unjust for the defendant to retain the benefit. *Paripilo*

v. *Hallman*, 510 N.E.2d 8, 11 (Ill.App.Ct 1987). To state a claim for civil conspiracy, a plaintiff must plead the existence of a combination of two or more persons for the purpose of some concerted action, either an unlawful purpose or a lawful purpose by unlawful means. *Adcock v. Brakegate, Ltd.,* 645 N.E.2d 888, 894 (Ill. 1994).

Previously, in the FAC, Class Plaintiffs plead a cause of action under the Illinois Consumer Fraud and Deceptive Business Practices Act. (FAC ¶¶ 388-408). In this Court's March 20, 2008 ruling on the Motion to Dismiss the First Amended Complaint, it construed this particular claim to be disavowing a claim of fraud, but rather pursuing a claim based on a violation of the Uniform Deceptive Practices Act. *Vulcan Golf LLC v. Google Inc.,* 2008 WL 818346, at *17 (N.D. Ill. Mar. 20 2008) (Manning, J.). Under such a scenario the heightened pleading requirements or Rule 9(b) would not apply.

While Plaintiffs chose not to replead this claim in the TAC, it is noteworthy because both an unjust enrichment claim and conspiracy claim require an allegation of wrongful/unlawful conduct, and not necessarily fraudulent conduct. *Association Ben. Services, Inc. v. Caremark Rx, Inc.*, 493 F.3d 841, 855 (7th Cir. 2007) (stating "We have already acknowledged that, under Illinois law, fraud is not an indispensable element of an unjust enrichment claim"). The TAC is replete with allegations of wrongful conduct that would establish the unjust nature of allowing Defendants to retain the benefits from the Deceptive Domain Scheme. (TAC ¶¶ 162-177 (using, licensing, monetizing domains); 178-181 (domain redirection and concealment); 185-191 (tasting and kiting of domains); 205 (use of distinctive and valuable marks causing dilution). Likewise, this wrongful concerted action is also sufficient to establish the requisite elements of the civil conspiracy count.

To the extent this Court construes the unjust enrichment claim to be based upon fraud, and subject to the heightened plead requirements of Rule 9(b), Plaintiffs have satisfied this burden as well. As discussed in section IV(A)(2), *infra*, and incorporated herein, Plaintiffs have alleged the necessary factual allegations for a real time, 24 hour a day, ongoing Deceptive Domain Scheme where much of if the information is solely in the control of the Defendants.

C. Plaintiffs have alleged a claim for interference with prospective advantage.

Class Plaintiffs sufficiently plead against each Defendant a valid claim for intentional interference with prospective economic advantage. Class Plaintiffs plead facts showing that: (1)

plaintiff has a reasonable expectancy of entering into a valid business relationship; (2) defendant knows of plaintiff's expectancy; (3) defendant intentionally interferes in plaintiff's expectancy, preventing it from ripening into a valid business relationship; and (4) plaintiff suffers damages from defendants' interference. *Dynabest, Inc. v. Yao,* 760 F.Supp. 704, 712 (N.D.Ill. 1991). Defendants take issue with the second element.

Defendants' argument fails to appreciate the allegations of Count XI were brought by Lead Plaintiffs in their individual and representative capacities against all Defendants (TAC¶ 459). Furthermore, paragraph 462 of the TAC provides "Defendants know and understand the existence of the relationship between the Lead Plaintiffs/Class Members and third party Internet consumers….". Similarly, it is also alleged that all defendants intentionally taste, kite, register and otherwise assist domain registrants in procuring Deceptive Domains for the express purpose of monetization in the Google Network with AdWords advertisements. (TAC¶ 142). Thus even if Defendants don't individually operate a particular domain/site it does not necessarily mean they are unaware of a particular domain/site, or have not sufficiently participated in the Deceptive Domain Scheme as to cause direct and proximate injury to Class Plaintiffs' and the Class. Plaintiffs have adequately pled Defendants' knowledge of Plaintiffs' expectancy and Defendants' argument is yet again an evidentiary issue and not a pleading deficiency.

V. CONCLUSION

For the foregoing reasons, Lead Class Plaintiffs' respectfully request that Defendants' Motion to Dismiss Counts (I, II, III, XI, XII, XIII) be denied as to each Defendant.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B. SANFILIPPO & SONS, INC., BLITZ REALTY GROUP, INC., and VINCENT E. "BO" JACKSON, Individually and on Behalf of All Others Similarly Situated,	) Civil Action No. 07 CV 3371
Lead Plaintiffs,	) Honorable Blanche M. Manning
v.	) Magistrate Judge Geraldine Soat Brown
GOOGLE INC., OVERSEE.NET, SEDO LLC, DOTSTER, INC., AKA REVENUEDIRECT.COM, INTERNET REIT, INC. d/b/a IREIT, INC., and JOHN DOES I-X,	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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